IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21/03/2003

CORAM

THE HON'BLE MR. JUSTICE K. SAMPATH

W.P.No.1276 of 2003
and
W.P.M.P.No.1586 of 2003

P. Natarajan,
S/o P. Perumal,
S.No.47, Sunitha Nagar,
Dunkrik Post,
Wadagaoncheri,
Pune 411 014. ... Petitioner

-Vs-

1. The commissioner of Labour,
DMS Campus, Teynampet,
Chennai 600 006.

2. The Deputy Commissioner of
Labour, 5, Shivaji Nagar,
Pune 411 005.

3. T.V.S. Motor Company Ltd.
- Rep. by its Vice President
(I.R.) Thiru S. Rajagopaln,
Harita, Hosur,
Dharmapuri District 635 109.

4. Shri M.R. Mande,
Labour Law Consultant/
Enquiry Officer,
Prem Mohan Multipurpose
Security & Allied Services
(P.) Ltd., C-6, Shangrilla
Garden, II Floor,
31, Bund Garden Road,
Pune 411 001. ... Respondents

For Petitioner :: Mr.M.K. Hidayathullah

For Respondents 1 & 2 :: Mr.S.V. Durai Solaimalai,
Government Advocate.

For Respondent 3: ... Mr. Karthick for
M/s T. Gopalan & Co.

This writ petition is filed under Article 226 of the
Constitution of India for a writ of mandamus as stated therein.

:ORDER
The prayer is for a mandamus to direct the respondents to consider and pass orders on the petitioner's latest representation dated 10-12-2002 and conduct de novo enquiry in regard to the allegations against the petitioner at Hosur in Tamil Nadu or in any other place at Tamil Nadu in the petitioner's mother tongue Tamil.

2. The facts as set out in the affidavit in support of the writ petition are as follows:

The petitioner had completed X Standard. He was appointed as Operator L-1 in the third respondent company on 22-9-1995 at Hosur. He had been serving in his capacity as Operator with unblemished record. There was Section 18(1) Settlement under I.D. Act between the Management and the Trade Union at Hosur Factory. The petitioner is one of the beneficiaries. He is continuously paying the subscription to the Trade Union INTUC, TVS Employees Union, Hosur, every quarter in a year since 22-9-1995. He is well-versed only in Tamil. Though he can speak Hindi, he does not know to read and write. His knowledge in English is also not fluent. He is restricted only to sign in English. The Union placed charges of demand for the enhancement of salary at Hosur. The petitioner's salary is based upon Madras Price Index. By communication dated 5-11-2001 the management has reiterated that his original terms and conditions of appointment stand unaltered. The petitioner contributed his signature in the Union, which is not to the liking of the Management. The Management purported to transfer him from Hosur, Tamil Nadu, to Pune, vide Ref.PER/392, dated 4-4-1998. He joined the Pune Ware-House on 18-4-1998. Though his original appointment was as Operator L.1, he was made to work without any designation, assigned odd jobs like Telephone Attender, Despatch Clerk, attending to drawing of moneys from Bank and deposits of cheques, filing of correspondence in the office and other menial works. Ignoring the petitioner's experience as Operator L-1, his transfer to Pune to attend odd jobs is more by way of punishment. It was not a routine transfer. However, he continued in the transferred place at Pune. Ever since his transfer to Pune, the petitioner has been making repeated written requests for retransfer to Hosur. There has been no response to his requests. However, on 19.9.2002 the third respondent issued show cause notice levelling certain charges inter alia stating that he used an unparliamentary word in Hindi against one contract labour by name Sachin at Pune. Show cause notice had been issued from Hosur, Tamil Nadu, to the petitioner's Pune address. He submitted his explanation on 21-8-2002. The third respondent appointed the fourth respondent as Enquiry Officer to conduct a domestic enquiry into the charges levelled against the petitioner. The petitioner has been making repeated requests to conduct the enquiry in Tamil, in which he is well-versed since he is not able to follow the proceedings in English having very limited knowledge. Further, some of the communications were sent by the Enquiry

Officer in Marati, which the petitioner does not know. His request has not at all been considered. He was subjected to great hardship and trouble. He has to spend money to have the assistance of English knowing persons to read the communications and even to send reply. Since he is not fully conversant in English, he is not in a position to ascertain himself whether what he wanted to convey had been properly translated into English. The petitioner is undergoing mental agony, anguish and irreparable injury by such proceedings conducted in English and communication sent in Marati. The petitioner is denied a fair enquiry. Principles of natural justice are not applied in the proceedings. During the proceedings, except the petitioner, everybody was conversing only in Marati and the petitioner has to watch the proceedings like a deaf and dumb person. Due to the communication gap, he is not able to effectively represent himself. He is also denied to engage an Advocate in the domestic enquiry. The petitioner, therefore, sent a communication dated 10-12-2002 highlighting the denial of principles of natural justice to him requiring the authorities to issue direction to stop further enquiry proceedings by the fourth respondent and further seeking direction to the management to conduct the enquiry de novo in Tamil Nadu and also furnish the documents to him to make his representation effectively. There is no positive response. In these circumstances, the present writ petition has been filed.

3. Notice was ordered on 14-1-2003. Respondents 1 to 3 entered appearance through Counsel and the third respondent filed a counter, which is to the following effect:

On 28-7-1995 the petitioner submitted a printed application for employment in which he declared that he could speak, read and write Tamil, English and Hindi. The petitioner has been working in the third respondent office in Pune from 20-4-1998. In July-August, 2002 there were reports from the Area Office, Pune, that on 3-7-2002 the petitioner had unauthorisedly taken an important and confidential office document from the representative of the Courier, before it was delivered to the addressee and when the addressee complained about the nonreceipt of the said document, the area office came to know that the petitioner had unauthorisedly collected the cover from the Courier, opened the same, took out the confidential document and kept it in his drawer. It was further reported that on 8-7-2002 at about 10.30 a.m. when the errand boy of a contractor was packing some of the personal belongings of Shri B.V. Sridhar, General Manager (Service), as per the direction of the Area Manager, the petitioner needlessly interfered and threatened the errand boy that how he could send that without his permission. The petitioner also hit him on his face.

On 19-8-2002 a show cause notice was issued to him pointing out the misconduct on the part of the petitioner and calling upon him to show cause why disciplinary action should not be taken against him. The petitioner gave a reply on 21-8-2002. The petitioner had not addressed to the acts of misconduct levelled against him. Therefore, he was asked to appear for an enquiry. The domestic enquiry was held by an independent outsider. The petitioner did not participate in the enquiry. He used to participate on some days, avoid enquiry on some other days and he used to raise trivial issues solely with a view to frustrate the enquiry. At that stage, he addressed a letter dated 25-1 1-2002 to the second respondent purporting to be a petition under Section 2-A of the Industrial Disputes Act, challenging his transfer from Hosur to Pune made in April, 1998 and also making imaginary grievances in

the matter of conduct of the enquiry into the charges levelled against him on 19-8-2002. On 10.12.2002 he made a further representation making imaginary grievances against the enquiry to the second respondent at Pune with a copy to the first and the third respondents. The representation has been addressed to the second respondent, who is not amenable to the jurisdiction of this Court. The writ petition is therefore not maintainable.

As regards the prayer for de novo enquiry in some other place in Tamil Nadu, it is stated that the petitioner is working in Pune and he could not be allowed to say that the enquiry should be conducted away from his working place. In any event, only the third respondent had ordered the enquiry to be held at Pune. The forth respondent is a private person and is not amenable to the writ jurisdiction. Since no relief has been claimed against the first and the fourth respondents, the writ petition against them is not sustainable.

The petitioner is a workman within the meaning of Section 2-A of the Industrial Disputes Act. If the disciplinary action initiated against the petitioner results in imposition of any punishment, it is always open to him to move the machinery under the Industrial Disputes Act and seek remedy. When such remedy is sought before the adjudicating authority under the Industrial Disputes Act, even if for any reason, the complaint of the petitioner against the enquiry is countenanced, the third respondent will have the opportunity of justifying its action by leading evidence. Therefore, no case is made out to injunct the enquiry at this stage. It is for the petitioner to decide whether or not he should participate in the enquiry. It is open to the petitioner to raise whatever objections he has against the enquiry and without prejudice to those objections, he could participate in the enquiry and avail of the opportunities given to him to defend his case. It is not open to him to seek direction to injunct the enquiry at this stage, particularly when the enquiry is in progress and witnesses are being examined.

In the first sitting of the enqiry held on 23.9.2002, the petitioner accepted that he had studied up to S.S.L.C., that he could understand English, that the proceedings could be recorded in English and that he had no objection to the fourth respondent conducting the enquiry. It is not open to the petitioner to challenge his transfer from Hosur to Pune made in April, 1998. If, as alleged by the petitioner, any communication had been sent by the Enquiry Officer in Marati, this respondent would take steps to furnish the petitioner with English translation. Hindi is generally spoken and understood in Maharashtra including Pune. The petitioner knows Hindi and it will not be difficult for him to understand Hindi. He claims to be an Ex-serviceman and therefore, he would be conversant with Hindi, which fact he accepted at the time of joining the employment. The enquiry is being conducted only in English, with which the petitioner is quite familiar. When non-English speaking witness is examined, the deposition is translated into English and recorded in English and hence no prejudice would be caused to the petitioner. It is not admitted that the petitioner is not conversant with English. He has been corresponding with the third respondent in English. He does not have a right to demand or dictate about the place where the enquiry should be held in respect of the charges levelled against him and in any event, he is working in Pune and enquiry can be held only in Pune. He cannot demand shifting the place of enquiry from Pune to any other place in Tamil Nadu. Not only his demand is unreasonable, but also has no basis in law.

Neither the first respondent nor the second respondent has any power under any Enactment to give any direction about the conduct of the enquiry. The points raised in the petitioner's representation dated 10-1 2-2002 do not fall within the powers of jurisdiction of the first or the second respondent under any law. The petition is gross abuse of process of law and is liable to be dismissed.

4. By consent the main writ petition was taken up and arguments were heard.

5. The appointment order dated 22-9-1995 clearly provides that during the period of training, the appointee should accept transfer to any place in the organisation or to any other division or associates of the company existing or to be formed in future or to any of the group of companies in any place, if required. If the trainee completed one year training to the satisfaction of the management, he would be considered for appointment on the regular rolls of the company on probation in a suitable post based on the progress the trainee had shown during the training period. On 4-4-1998, effective 6.4.1998, the petitioner was transferred to the Marketing Department on the same designation and salary in terms of the appointment order dated 22-9-1995 and also in terms of Clause 4 of the Certified Standing Orders of the Company applicable to the petitioner. He was posted to Pune. He was relieved from his duties in the Factory Production Department, effective close to his shift 4-4-1998 to enable him to make arrangements for his journey. By order dated 5.12.1998, effective 22-9-1998, the petitioner was confirmed as Operator L.1 in Group-A. His basic salary was also revised. It was further revised on 22-9-200 as Rs.1479/- per month. Periodical revisions were being made. However, on 19-8-2 002 the petitioner was issued with a show cause notice. He submitted his explanation, which was perused and found to be not satisfactory. The fourth respondent was asked to conduct a domestic enquiry against him.

6. The notice of enquiry provides, among other things, as follows:
"The management will be represented by Shri Suresh B. Patil, Senior Manager (Personnel), M/s Harita Grammer Limited, Pune, sister concern of TVS Motor Company Limited.

The enquiry procedure will be explained to you by the Enquiry Officer.

The enquiry will be conducted based on the "Principles of Natural Justice" and based on the provisions of the Model Standing Orders contained in the Bombay Industrial Employment (Standing Orders) Rules, 195 9.

If you are interested, you can bring a co-employee to assist you in the enquiry. However, please note that no outsider will be permitted to assist you in the enquiry.

Please note that if you do not appear for the enquiry on the above date and time or refuse to participate, the enquiry will be conducted ex parte and disposed of on merits."

7. On 23-9-2002, the petitioner made an objection in writing
that,
"recording of proceedings are being gone with manual hand written in English.
But, I have studied only up to X Standard and I am unable to understand
English properly. So I request you to take enquiry proceedings in Tamil, i.e.
my mother tongue and I have strong verbal objection to handwritten script made
available to me is in poor state. The average eye sight person cannot read
the said script, which affect the defence of me.
The procedure of conducting domestic enquiry was not brought to my
notice by the Presiding Officer conducting the domestic enquiry.
.....
I was not furnished with the copy of the charge sheet till date.
.....
Notice, order communication or information handed over to me have not
been read out and explained to me.
.....
The order for issue of some important documents to me for preparing my
defence should be allowed.
I may kindly be allowed to represent my case through Advocate.

Procedure of conducting domestic enquiry should be explained to me."

8. This is followed by another letter dated 26.11.2002. The
petitioner objected to the fourth respondent conducting the enquiry, that he
has no faith in him and that the enquiry is not in accordance with principles
of natural justice. He wanted change of Enquiry officer. This is followed by
another letter dated 27.11.2002 stating that the Enquiry Officer is
co-operative with the Management and that he allowed one Suresh Patil,
Manager of Harita Grammer Company unofficially. He shouted at the petitioner
in loud voice and threatened him. The petitioner was harassed at the time of
enquiry. One Ranganath Pund was allowed as the defence counsel. The said
Ranganath Pund is the President of Poona Zilla Mazoor Sabha and he is not the
petitioner' s union leader. He knows only Marati and he could not explain
anything to the petitioner. Then only the petitioner dispensed with his
services and asked for assistance of another counsel. This was refused. So
he wanted the enquiry to be conducted in Tamil by following the principles of
natural justice, the Enquiry Officer to be changed and necessary documents and
Certified Standing O rders have to be furnished to him. 9.
Thereafter, he sent a letter on 10-12-2002 to the Deputy Commissioner of
Labour, Mumbai, that if the enquiry proceedings were to be conducted in Pune,
it would not be fair and "the petitioner would risk his life if the enquiry
was conducted out side the Ware House Complex; an outsider has been appointed
as Enquiry Officer, which is violative of the principles of the Standing
Orders; the cause of action for conducting enquiry as per the management's
documents and files will be within the State of Tamil Nadu and not at Pune; he
prayed for stoppage of all enquiry by the fourth respondent and conduct of de
novo enquiry by appointing a fresh Enquiry Officer; the enquiry is to be held
within the State of Tamil Nadu. Not having been successful in stalling the
proceedings, the petitioner has come to this Court.

10. The respective contentions have already been set out. On

behalf of the third respondent, two documents have been produced. The first one is the application dated 28-7-1995 submitted by the petitioner for his employment. In Column 11 of the application, under languages known, the petitioner has said that he knows to speak, read and write Tamil, English and Hindi. In Column 14 it is shown that he joined on 2nd November, 1983 in the Light Air Defence of the Indian Air Force as Wireless Operator and was discharged in January, 1992 on medical ground. The other document is the minutes of the enquiry conducted on 23-9-2002. The petitioner has given a statement as follows:

"My name is P. Natarajan. I am working as an Operator L-1 at TVS Motor Company's Warehouse and Marketing Office at Wagholi since last about four and half years. .... I have studied up to S.S.L.C. I, understand English. The proceedings of the enquiry may please be recorded in English. I have no objections for the authority of the signatory to Exs.P-1 to P-4 as well as for Mr.M.R. Mande conducting this enquiry as the Enquiry Officer.y However, I have objections for Mr.S.B. Patil appearing in this enquiry as the Company Representative, because he is an employee of Harita Grammer Ltd. and not from TVS Motor Company of which I am an employee. ..... I am also producing in the enquiry, the copy of my letter dated 14-9-2002 (four pages in English) sent to the Vice President (Operations) Mr.S. Rajagopalan at Hosur, regarding the charges against me mentioned in Ex.P-4. .... I say that I have not been charge sheeted. ..... Advocate P.M. Behera may please be allowed to defend my case in this enquiry." [Emphasis supplied]

The petitioner has also signed the minutes.

11. Thus, the petitioner himself had in the application for employment indicated that he knew to read, write and speak English, Hindi and Tamil and on 23-9-2002 had specifically stated that the enquiry could be conducted in English and that he had no objection to the fourth respondent being the Enquiry Officer. As rightly pointed out by the learned Counsel for the third respondent, it is not open to the petitioner to change track and ask for enquiry being conducted in his mother tongue Tamil. The charge against him is that he had unauthorisedly taken an important and confidential office document from the representative of the Courier before it was delivered to the addressee and when the addressee complained about the non-receipt of the said document, the area office came to know that the petitioner had unauthorisedly collected the cover from the Courier, opened the same, took out the confidential document and kept it in his drawer and again, when the errand boy of a contractor was packing some of the personal belongings of Shri B.V. Sridhar, General Manager (Service) as per the direction of the Area Manager, the petitioner needlessly interfered and threatened the errand boy as to how he could send this without his permission; the petitioner also hit him on his face.

12. These things were alleged to have happened in Pune. It is absolutely meaningless for the petitioner to ask for an enquiry in Tamil Nadu. Again, as pointed out on behalf of the third respondent, if the disciplinary action initiated against him results in imposition of any punishment, it is always open to him to move the machinery under the Industrial Disputes Act and seek remedy and if before the authority under the

Industrial Disputes Act the complaint of the petitioner is entertained, it would be open to the third respondent to justify his action by leading evidence. It is, therefore, totally unnecessary to stall the proceedings at this stage. Further, if objections are available to the petitioner, he can raise them at the enqiry and without prejudice to those objections, he can participate in the enquiry and avail of the opportunities given to him to defend his case. I do not wish to say anything further. The demand of the petitioner to have the enquiry at some place in Tamil Nadu and for conducting of the proceedings in Tamil appears to be rather unreasonable. His demand for assistance of a lawyer also does not appear to be justified. But, it is always open to the petitioner, as pointed out on behalf of the third respondent that he could raise all objections available to him and without prejudice to those objections, choose to either participate in the enquiry or remain ex parte and take the matter for adjudication under the Industrial Disputes Act before the proper authority.

13. It is also pointed out that enquiry had been proceeded with and witnesses are being examined. The main object of the petitioner appears to be to abort the proceedings by some means. This cannot be allowed. In my view, the writ petition is premature and is misconceived. It is liable to be dismissed and accordingly it is dismissed. The connected miscellaneous petition is also dismissed. However, there will be no order as to costs.

14. It is, however, expected that in the conduct of the enquiry, the principles of natural justice will be followed and the petitioner would be afforded proper opportunity to defend himself.

21-3-2002
Index: Yes
Internet: Yes
IGP

To

1. The commissioner of Labour,
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